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93-22

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MAY - 5 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

93-22

May 4, 1993

BY COURIER SERVICE

Honorable Donna R. Searcy  
Secretary  
Office of the Secretary  
Federal Communications Commission  
Washington, D.C. 20554

Dear Judge Searcy:

Enclosed please find an original and four copies of  
Reply Comments On Proposed Rules On Behalf Of Association Of  
Information Providers Of New York Info Access, Inc. and American  
Telnet, Inc.

Very truly yours,

  
Jane B. Jacobs

Enc.

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MAY - 5 1993

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
 ) CC Docket No. 93-22  
Policies and Rules Implementing ) RM-7990  
the Telephone Disclosure and )  
Dispute Resolution Act )

**REPLY COMMENTS ON PROPOSED RULES  
ON BEHALF OF  
ASSOCIATION OF INFORMATION PROVIDERS OF NEW YORK,  
INFO ACCESS, INC., AND AMERICAN TELNET, INC.**

Association of Information Providers of New York, a  
trade association of providers of pay-per-call services, Info

Initially, LEC's are contractual billing agents for the service providers. As such, they are the fiduciary agents of the service providers, and it would be inappropriate for an agent to police the activity of its principal.

Additionally, in the ordinary course of business, LEC's do not have information necessary for such oversight. Currently service providers have extensive interaction with interexchange carriers ("IXC's") but not with LEC's. If LEC's were compelled to make these determinations, service providers would be required to provide them with information that is not needed by or given to them in the ordinary course of business. and would be forced

not required to have a written agreement before it provides long-distance service to a customer; both the services provided by AT&T and pay-per-call programs are telephone services and customers are accustomed to making arrangements for such services by telephone.

Additionally, the service provider and caller should not be prohibited from entering into a contractual agreement for the provision of future services during a call to a pay-per-call service. It is during the pay-per-call that a provider is in communication with its customers, and it should not be precluded from conducting business with its customers at that time.

3. AT&T and Sprint suggest that the Commission should not prescribe a procedure for termination of a pay-per-call service if they believe that such service violates the Act. Both parties claim that carriers should determine the procedures to be used.

Again, as set forth in our initial comments, we believe that it would be unconstitutional for carriers to make the determination as to which services violate the Act. Leaving this decision to the carrier is particularly inappropriate in the case of AT&T, which itself can offer pay-per-call services. If AT&T is given sole discretion over both the decision to terminate a program, and the procedure to be used to terminate programs, those decisions will be made by a competitor of the service provider whose service AT&T seeks to terminate.

We believe that permitting the carriers to determine their own procedures for cessation of service is unconstitutional, anti-competitive and fundamentally unfair. The enforcement of a statute is a governmental act and may not constitutionally be delegated to private third parties. The FCC, FTC and State attorneys general all have authority to regulate the practices of 900 providers. Termination of service by a carrier is unnecessary and transforms a common carrier into a censor of content, a role that is totally abhorrent to its statutory obligations.

4. Numerous comments were received as to whether intrastate pay-per-call services should be required to use a 900 service access code. Several comments pointed out technological impediments to requiring a 900 service access code for intrastate calls that we believe are compelling.

Moreover, in New York, for example, pay-per-call programs using local office codes have existed since 1930, when time and weather pay-per-call services began. These are mature businesses with established customers. The public knows and understands the nature and costs associated with such calls. Those business relationships should not be severed, particularly for what is at best a speculative benefit. To do so also would amount to a taking of property without compensation in violation of the Fifth Amendment.

Finally, 900 service is extremely expensive. To

requiring intrastate programs to use 900 service access code would

We believe such a policy is both absurdly overreaching and goes beyond the terms of the Act. Congress provided for blocking only where technologically feasible, and at the same time recognized the great utility of pay-per-call services to consumers. It would be extraordinarily inappropriate for the Commission to mandate universal blocking in central offices not equipped with per line blocking, where Congress expressly declined to do so, particularly when the price of such a policy would be to block customers who desire such beneficial services. If CPUC's policy has been stated correctly, it is anti-competitive and unconstitutional, and should be condemned and pre-empted, not emulated by the Commission.

7. A number of comments addressed provision of pay-per-call services through collect calls, which usually are prompted by a call to an 800 number or other toll free number by the consumer.

In the typical collect call service, a customer dials a toll free number and is offered a collect call in return. During the initial call the consumer is advised of the nature of the collect call and the charge for it. If the caller wishes to have the collect call, s/he is required to push "1" on a touch tone telephone. When the collect call is placed to the caller, after an additional price disclosure, s/he has to push the "1" button a second time to accept the call.

Under these procedures, the consumer actually has greater, rather than less protection than in a typical pay-per-

call scenario. The disclosure is provided twice -- once during the toll free call, and again in the preamble to the collect call. The caller also must take affirmative action during two separate calls to request and accept the collect call.

In restricting the use of toll free numbers for pay-per-call services, Congress was concerned that there would be confusion stemming from a charge accruing from a call to what commonly is considered a toll free call. That concern is eliminated by the dual disclosure and repeated affirmative acceptance of the collect call. With these safeguards, provision of collect calls through toll free numbers provides more consumer protection than typical pay-per-call services, and should be permitted to continue subject to the rules adopted by the FCC and FTC for pay-per-call services generally.

8. A number of comments also addressed the issue of charges for blocking pay-per-call services. We submit that a distinction should be drawn between blocking for residential and commercial customers. Business customers typically have in-house Private Branch Exchange technology with which they can block pay-per-call services, and if they want blocking through the LEC's, they should be required to pay for it. These costs should not fall on the provider of pay-per-call services and their customers.

9. The Consumer Protection Committee of the National Association of Attorneys General ("NAAG") proposes that credits or refunds be issued if services are "deceptive, misleading or

unfair, is in violation of state law or regulation, or where the call is unauthorized."

If a service complies with the Act and FCC/FTC rules, then the provider will be in compliance with the TDDRA. That is the subject of this rulemaking and not a claim of deceptive, misleading, unfair, or other alleged violations of state law or regulation. Under state law, the requested relief is a matter for resolution by the courts. NAAG may not escape the due process right of pay-per-call providers by amending the FCC rules under review here. As to unauthorized calls, as set forth in previous comments, such calls are the responsibility of the customer of record. A one-time write-off policy coupled with blocking properly balances customer and provider interests.

Finally, the terms suggested by NAAG also are amorphous and unduly vague, and provide guidance to no one as to what services are lawful and which are not.

10. NAAG also asks the Commission to require carriers to provide copies of "any and all consumer complaints filed against a pay-per-call service with a common carrier" without a subpoena.

Subpoenas are required of law enforcement officials for just this purpose: to avoid unwarranted intrusions on privacy. Subpoenas are intended to prevent overreaching by overzealous law enforcement officials, yet NAAG seeks this power without a subpoena. Before it could get a subpoena for carrier records, it could be called upon to demonstrate the relevance of such

information to an ongoing investigation. Here, NAAG seeks the power to obtain "any and all consumer complaints" regardless of relevance, and without meeting any standard necessary to obtain a subpoena. This request deserves censure rather than serious consideration.

Dated: New York, New York  
May 3, 1993

SEHAM, KLEIN & ZELMAN  
Attorneys for THE ASSOCIATION  
OF INFORMATION PROVIDERS OF  
NEW YORK, INFO ACCESS AND